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CLERK US DISTRICT COURT
DISTRICT OF NEVADA

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DONALD HINTON, DAVID HINTON and
JOHN REYES,

Case No. CV-S-03-0057-PMP-PAL

Plaintiffs,

vs.

CLARK COUNTY, NEVADA, a political
subdivision, acting by and through the LAS
VEGAS METROPOLITAN POLICE
DEPARTMENT; JOHN DOES 1-30 and
ROE ENTITIES 1-10,

Defendants.

DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT

Defendants, Las Vegas Metropolitan Police Department ("LVMPD") and Clark County, Nevada, by and through their attorneys of record, Marquis & Aurbach, hereby answer and allege as follows:

1. In answering paragraphs 1, 3, 4, 5, 6, 7, 18, 19, 21, 22, 26, 27, 31, 36, 41, and 47, the Answering Defendants are without sufficient knowledge to form an opinion as to the truth of the allegations contained therein, and therefore deny the same.

2. In answering paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 23, 24, 25, 28, 29, 30, 32, 33, 34, 35, 37, 38, 39, 40, 42, 43, 44, 45, 46, 48, 49, 50, 51, and 52, the Answering Defendants deny the allegations contained therein.

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1 3. In answering paragraph 3, the Answering Defendants admit the allegation
2 contained therein.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 Plaintiffs' suit fails to state a claim for relief as they failed to allege a violation of a right,
6 privilege, or immunity secured by the United States Constitution or by the laws of the United States.

7 **SECOND AFFIRMATIVE DEFENSE**

8 Plaintiffs' suit fails to state a claim for relief as there was adequate administrative and state
9 remedy which Plaintiffs could have pursued.

10 **THIRD AFFIRMATIVE DEFENSE**

11 Answering Defendants did not enact or promulgate any policy, statute, ordinance or custom,
12 policy or procedure which denied or abridged any of the Plaintiffs' constitutional rights.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 The damage sustained by the Plaintiffs, if any, was caused by the acts of third persons who
15 were not agents, servants, or employees of the answering Defendants, and who were not acting on
16 behalf of the Answering Defendants in any manner or form, and, as such, the Defendants are not liable
17 in any manner to the Plaintiffs.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 The complained of acts of the Answering Defendants were justified and privileged under the
20 circumstances.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 At all times mentioned in Plaintiffs' Complaint, the answering Defendants acted in good faith
23 belief that their actions were legally justifiable.

24 **SEVENTH AFFIRMATIVE DEFENSE**

25 The Answering Defendants are qualifiedly immune from the actions alleged against them in
26 Plaintiffs' Complaint.

27 **EIGHTH AFFIRMATIVE DEFENSE**

28 That Nevada Revised Statutes Chapter 41 limits the damages that may be collectible against

1 a political subdivision of the State of Nevada to FIFTY THOUSAND DOLLARS (\$50,000).

2 **NINTH AFFIRMATIVE DEFENSE**

3 The Answering Defendants are not subject to suit upon which the facts and conclusions as
4 stated in Plaintiffs' Complaint by reason of their sovereign immunity as a political subdivision of the
5 State of Nevada, and more particularly by reason of the provisions of NRS 41.031, 41.032, and
6 41.033.

7 **TENTH AFFIRMATIVE DEFENSE**

8 Plaintiffs' Complaint concerns a discretionary function of the Answering Defendants for which
9 the Answering Defendants are immune.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 The Plaintiffs' claims of constitutional violation is unsupported in both fact and law, as
12 Plaintiffs have not alleged sufficient basis from which a constitutional interest might arise in
13 conjunction with the alleged actions.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 To the extent Plaintiffs' causes of actions against Answering Defendants sound in negligence,
16 no recovery can be predicated upon 42 USCA §1983.

17 **THIRTEENTH AFFIRMATIVE DEFENSE**

18 Any injuries allegedly sustained by Plaintiffs were the result of their own negligence and/or
19 actions.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 Plaintiffs' claims are barred by the Tenth Amendment to the United States Constitution.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 Plaintiffs' claims are barred by the Eleventh Amendment to the United States Constitution.

24 **SIXTEENTH AFFIRMATIVE DEFENSE**

25 Plaintiffs cannot recover punitive or exemplary damages because Plaintiffs have failed to plead
26 and cannot establish facts sufficient to support allegations of malice, oppression or fraud. Plaintiffs
27 are not entitled to recover punitive or exemplary damages herein under any of the claims of relief
28 alleged as none of the Defendants' supervisors, directors or managing agents committed the alleged

1 malicious, fraudulent or oppressive acts, authorized to ratify such wrongful conduct or had advanced
2 knowledge of the unfitness of any employee(s) who allegedly committed the acts and did not employ
3 such person(s) with conscience disregard for the higher safety of others.

4 **SEVENTEENTH AFFIRMATIVE DEFENSE**

5 The claims, and each of them are barred by Plaintiffs' failure to plead those claims with
6 particularity.

7 **EIGHTEENTH AFFIRMATIVE DEFENSE**

8 Defendant LVMPD has not been negligent and has not breached its duty to properly supervise
9 the conduct of its employees with whom Plaintiffs interacted.

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 Defendants reserve the right to amend these Affirmative Defenses as discovery unfolds and
12 new information is discovered.

13 WHEREFORE, Defendants pray for judgment as follows:

- 14 1. That Plaintiffs take nothing by virtue of their complaint on file herein, that the
15 same be dismissed with prejudice;
- 16 2. For an award of reasonable attorneys fees and costs of suit incurred in the
17 defense of this action; and
- 18 3. For such other and further relief as this Court may deem just and proper in the
19 premises.

20 MARQUIS & AURBACH

21 By: 

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CERTIFICATE OF MAILING

I hereby certify that on the 7th day of April, 2003, I served a copy of the foregoing **ANSWER** upon each of the parties by depositing a copy of the same in a sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and addressed to:

Bradley Booke, Esq.
6000 S. Eastern Ave., #14A
Las Vegas, Nevada 89119

Edward Moriarity, Esq.
15 Jackson Street
Box 548
Jackson, Wyoming 83001

and that there is a regular communication by mail between the place of mailing and the place(s) so addressed.


an employee of Marquis & Aurbach